

VILLAGE OF ESTERO, FLORIDA

ORDINANCE NO. 2015 - 19

AN ORDINANCE OF THE VILLAGE COUNCIL OF THE VILLAGE OF ESTERO, FLORIDA, AMENDING CHAPTER 34, ZONING, ARTICLE VII, SUPPLEMENTARY DISTRICT REGULATIONS, DIVISION 15, EXCAVATION ACTIVITIES, OF VILLAGE OF ESTERO LAND DEVELOPMENT CODE TO LIMIT CERTAIN EXCAVATION ACTIVITIES RELATING TO WELL STIMULATION INCLUDING ACID STIMULATION AND HYDRAULIC OR ACID FRACTURING; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICT WITH OTHER ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 377.24, Florida Statutes, requires the approval of the local governing body prior to the issuance of any permit to establish an oil or natural gas well; and

WHEREAS, Florida's oil and gas regulations, Chapter 377, Florida Statutes, makes no reference to ~~well stimulation treatments including acid stimulation~~, hydraulic fracturing, ~~or~~ acid fracturing, or acid stimulation; and

WHEREAS, the Village of Estero currently regulates oil and gas exploration as a resource extracting activity as provided by the Land Development Code but requires further modification to adequately address; and

WHEREAS, ~~hydraulic fracturing~~ well stimulation utilizes vast amounts of water as a means of oil and gas exploration, thereby depriving the natural environment, residents and visitors of Florida of a valuable and increasingly scarce resource; and

WHEREAS, well stimulation treatments may involve the use of chemicals, some of which are known to be carcinogenic or otherwise harmful to human health; and

WHEREAS, exposure to the chemicals used in well stimulation treatments may pose a ~~widespread and~~ significant risk to public health and safety and the environment; and

WHEREAS, pursuant to Chapter 166, Florida Statutes, the Village Council has all powers of self-government not inconsistent with general or special law, including the power and authority to adopt ordinances providing for the public health, safety and welfare of the residents of the Village of Estero; and

44 **WHEREAS**, the Council has determined that the use of well stimulation as a means of
45 oil ~~and or~~ gas extraction is incompatible with ~~the Estero Comprehensive Plan~~, the existing and
46 planned uses within the Village, and public health, safety and welfare of the community **and**
47 **the Council has determined that this ordinance is consistent with the Estero**
48 **Comprehensive Plan.**
49

50 **NOW, THEREFORE**, be it ordained by the Village Council of the Village of Estero,
51 Florida:

52
53 **Section 1.** The forgoing recitals are true and correct and are incorporated herein by
54 this reference.
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56 **Section 2.** Chapter 34 Zoning, Article VII Supplementary District Regulations,
57 Division 15 Excavation Activities, is hereby amended as follows: Sec. 34-1651. – General
58 requirements for all excavation activities.

- 59 (a) Certificate to dig. A certificate to dig must be obtained prior to receiving approval to
60 excavate properties located within Level 1 or Level 2 zones of archaeological
61 sensitivity pursuant to chapter 22.
- 62 (b) Mining. Mining (def) activities may be permitted in accordance with chapter 12.
- 63 (c) Driving or sinking of wells for purpose of oil or gas exploration or extraction.
- 64 (1) No oil or gas exploration wells or test wells may be commenced prior to
65 obtaining a special exception for gas and oil exploration in accordance with the
66 procedures set forth in article II of this chapter.
- 67 (2) No oil or gas exploration wells may be used for or converted to production wells
68 prior to obtaining a special exception for gas and oil extraction in accordance
69 with the procedures set forth in article II of this chapter.
- 70 (3) No person or entity may engage in any oil and gas exploration or production
71 that utilizes well stimulation within **and below** the corporate boundaries of the
72 Village of Estero or, consistent with Florida Statutes §377.24(6), within the
73 tidal waters of the state abutting or immediately adjacent to the corporate limits
74 of the municipality, or within three miles of the Village's corporate limits
75 extending from the line of the mean high tide. As used in this section, the term
76 "well stimulation" shall mean a well intervention, exploration, operation, or
77 maintenance procedure performed by injecting fluid into a rock formation in
78 order to increase production at an oil or gas well by improving the flow of
79 hydrocarbons from the formation into the wellbore. Well stimulation does not
80 include routine well cleaning that does not affect the integrity of the well or the
81 formation. **Furthermore, it shall be a specific violation of this subsection**
82 **for any person or entity to engage in any oil or gas exploration or**
83 **production that engages in well stimulation which commences outside of**
84 **the municipal boundaries of the Village and in any way enters onto, into,**
85 **or under the ground surface of the municipal boundaries of the Village.**

- (d) Excavations for purpose of water retention or other land development. No excavation activities, including removal of surplus material may be commenced prior to receiving approval in accordance with the provisions of section 10-329 or chapter 12, as applicable.

Section 3. Codification. The Village Council intends that this Ordinance be made part of the Code of Laws and Ordinances of the Village of Estero, Florida; and that sections of this Ordinance can be renumbered or re-lettered to the appropriate word or phrase to accomplish codification, and regardless of whether this Ordinance is ever codified, the Ordinance can be renumbered or re-lettered and typographical errors and clarifications of ambiguous wording that do not affect the intent can be corrected with the authorization of the Village Manager without the need for a public hearing.

Section 4. Conflict with other Ordinances. The provisions of this article shall supersede any provisions of existing ordinances in conflict herewith to the extent of said conflict.

Section 5. Severability. In the event that any portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this ordinance.

Section 6. Effective Date. This Ordinance shall take effect immediately upon its adoption by the Village Council.

PASSED on first reading this 2nd day of December, 2015

PASSED AND ADOPTED BY THE VILLAGE COUNCIL of the Village of Estero, Florida this ____ day of _____, 2015.

Attest: **VILLAGE OF ESTERO, FLORIDA**

By: _____ By: _____
Kathy Hall, MMC Nicholas Batos
Village Clerk Mayor

Reviewed for legal sufficiency:

By: _____
Burt Saunders, Esq.
Village Attorney

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130			
131	Vote:	AYE	NAY
132	Mayor Batos	_____	_____
133	Vice Mayor Levitan	_____	_____
134	Councilmember Boesch	_____	_____
135	Councilmember Brown	_____	_____
136	Councilmember Errington	_____	_____
137	Councilmember Ribble	_____	_____
138	Councilmember Wilson	_____	_____